

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

|   |   |                    |
|---|---|--------------------|
| <b>KENNETH M. WEBB</b>                  | ) |                    |
| Claimant                                | ) |                    |
| VS.                                     | ) |                    |
|   | ) |                    |
| <b>ANDY'S RESTAURANT</b>                | ) | Docket No. 137,625 |
| Respondent                              | ) |                    |
| AND                                     | ) |                    |
|   | ) |                    |
| <b>TRI-STATE INSURANCE COMPANY</b>      | ) |                    |
| Insurance Carrier                       | ) |                    |
| AND                                     | ) |                    |
|   | ) |                    |
| <b>KANSAS WORKERS COMPENSATION FUND</b> | ) |                    |

**ORDER**

Claimant requested review of the post-award Order dated January 17, 1997, entered by Administrative Law Judge Bryce D. Benedict.

**APPEARANCES**

Mark W. Works of Topeka, Kansas, appeared for the claimant. James B. Biggs of Topeka, Kansas, appeared for the respondent and its insurance carrier. Darin M. Conklin of Topeka, Kansas, appeared for the Workers Compensation Fund.

**RECORD**

The record considered by the Appeals Board consists of the transcript of the hearing held before Administrative Law Judge Bryce D. Benedict on January 15, 1997, and the administrative file assembled by the Division of Workers Compensation in this proceeding.

### ISSUES

This matter came before Administrative Law Judge Bryce D. Benedict on January 15, 1997, as a request for payment of the weekly benefits granted in the original Award dated February 29, 1996, entered by Special Administrative Law Judge Douglas F. Martin. At the January 15, 1997, hearing, claimant specifically waived any claim for post-award attorney fees and penalties in connection with this matter. Administrative Law Judge Bryce D. Benedict issued an Order dated January 17, 1997, denying claimant's request for payment. The claimant requested the Appeals Board to review that Order.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire the record, the Appeals Board finds as follows:

Special Administrative Law Judge Douglas F. Martin originally decided this case by Award dated February 29, 1996. In that Award, the Special Administrative Law Judge granted claimant permanent total disability benefits totaling \$125,000 payable at \$70 per week commencing the date of accident, May 9, 1989. The Special Administrative Law Judge also evenly divided the liability for the Award between the respondent and the Workers Compensation Fund. Respondent, its insurance carrier, and the Workers Compensation Fund appealed the Award to the Appeals Board who heard oral argument on July 23, 1996. Both on March 8, 1996, and on August 23, 1996, claimant wrote certified letters to the respondent's insurance carrier and demanded payment of the weekly benefits which had accrued under the terms of the Award.

On March 27, 1996, during pendency of the appeal to this Board, respondent paid claimant the lump sum of \$12,584.95 and later made a second payment of \$175. The record does not indicate the weeks the payments represent or how they were computed. Respondent now represents it made payment by mistake, not realizing payment was stayed due to the appeal.

At the January 15, 1997, hearing, claimant contended the Workers Compensation Act required respondent to begin making payments of the weekly benefits ordered in the Award on the 30th day after presentation of oral argument to the Appeals Board. Claimant also contended respondent could not utilize the earlier lump sum payments as a credit to reduce the weekly payments due and owing under that portion of the Award that accrued after argument to the Appeals Board. On the other hand, respondent contended it was entitled to a credit for those payments which were mistakenly made. In the Order dated January 17, 1997, the Administrative Law Judge agreed with respondent and determined no benefits were due and owing to claimant at that time and, therefore, the Administrative Law Judge denied claimant's request for payment.

On March 28, 1997, the Appeals Board issued its decision in the appeal of the original Award and reduced claimant's total award from \$125,000 to \$4,648 payable at

\$11.20 per week commencing May 9, 1989, for 415 weeks. Based upon the above, the Appeals Board finds respondent and its insurance carrier have satisfied the award due claimant. Respondent and its insurance carrier are entitled to a credit for the amounts previously paid in this proceeding which now exceed the amount awarded claimant. Therefore, claimant's request for payment of the weekly benefits which have accrued following oral argument should be denied as respondent's obligation under the Award has been satisfied.

**AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order dated January 17, 1997, entered by Administrative Law Judge Bryce D. Benedict should be, and hereby is, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of June 1997.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Mark W. Works, Topeka, KS  
James B. Biggs, Topeka, KS  
Darin M. Conklin, Topeka, KS  
Bryce D. Benedict, Administrative Law Judge  
Philip S. Harness, Director